

COUNCIL
110th session
Agenda item 10

C 110/10
28 May 2013
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CONSIDERATION OF THE REPORT OF THE LEGAL COMMITTEE

Note by the Secretary-General

SUMMARY

<i>Executive summary:</i>	This document reports on the outcome of the 100th session of the Legal Committee
<i>Strategic directions:</i>	1, 2, 3, 4, 6 and 8
<i>High-level actions:</i>	1.1.2, 1.2.1, 1.3.1, 1.3.5, 2.0.1, 3.1.3, 3.5.1, 4.0.5, 5.2.4, 6.1.2, 6.2.1, 6.2.2, 6.3.1 and 8.0.3
<i>Planned outputs:</i>	1.1.2.6, 1.1.2.41, 1.1.2.42, 1.2.1.1, 3.5.1.4, 1.2.1.4, 1.2.1.5, 1.3.1.1, 2.0.1.14 to 2.0.1.17, 3.1.3.1, 3.5.1.4, 4.0.5.1, 5.2.4.5, 6.1.2.1, 6.2.1.2, 6.2.1.3, 6.2.2.3, 6.3.1.1, 6.3.1.2 and 8.0.3.2
<i>Action to be taken:</i>	Paragraph 42
<i>Related document:</i>	LEG 100/14

INTRODUCTION

1 The report of the 100th session of the Legal Committee (LEG 100/14) is submitted to the 110th session of the Council in accordance with the provisions of Article 34(b) of the IMO Convention.

2 The 100th session of the Legal Committee was held from 15 to 19 April 2013. It was attended by 88 Member States; two Associate Members; one United Nations system agency; two intergovernmental and 19 non-governmental organizations. The Chairman was Dr. Kofi Mbiah (Ghana) and the Vice-Chairman was Mr. Walter de Sá Leitão (Brazil), who were re-elected in their respective capacities for 2014.

3 In order to align its practice with that of the other Committees, the Committee decided to revert to having only one Vice-Chairman, and instructed the Secretariat to amend its Rules of Procedures accordingly (LEG 100/14, paragraphs 12.3 and 12.4).

4 Decisions of the Committee of interest to the Council are summarized in the ensuing paragraphs with reference to the relevant paragraphs of document LEG 100/14.

MONITORING THE IMPLEMENTATION OF THE HNS PROTOCOL, 2010

5 The Committee endorsed the Guidelines on reporting of HNS contributing cargo, contained in annex 2 to document LEG 100/3, including its annexes and appendices (LEG 100/14, paragraphs 3.1 to 3.5), which had been developed at a workshop on HNS Reporting, jointly organized by the IMO and IOPC Funds Secretariats. The workshop, which was held at IMO on 12 and 13 November 2012, in preparation for the entry into force of the HNS Protocol 2010, was attended by a large number of Member States and observers.

6 The Committee noted that the Guidelines, which were not binding, were intended to facilitate the submission by States to the Secretary-General, when ratifying or acceding to the HNS Protocol, of data on contributing cargo.

FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

7 The Committee noted the findings of a survey conducted by Seafarers' Rights International (SRI) (LEG 100/5/1), concerning respect for the rights of seafarers facing criminal prosecution. The survey, conducted in eight languages, was carried out over a 12-month period, ending in February 2012. A total of 3,480 completed questionnaires had been submitted by seafarers from 68 different nationalities.

8 The findings strongly suggested that the rights of seafarers, as enshrined in the Guidelines on fair treatment of seafarers in the event of a maritime accident, adopted jointly by IMO and ILO, are often subject to violation.

9 The Committee expressed general support for the continuous promotion of the Guidelines and agreed that the issue of fair treatment of seafarers in the event of a maritime accident should remain on the agenda of the Legal Committee. Delegations were invited to submit proposals for outputs to improve compliance with the Guidelines to its next session (LEG 100/14, paragraphs 5.1 to 5.6).

10 The Committee also considered a submission by the Islamic Republic of Iran (LEG 100/5) proposing that the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident be reconvened to consider the issue of shore leave including a draft resolution regarding shore leave and shoreside facilities.

11 The Committee, recalling its decision at LEG 99 that matters concerning unfair treatment of seafarers due to nationality or religion be referred to the FAL Committee, noted that the Islamic Republic of Iran had subsequently submitted a draft amended text on the relevant Standard of the FAL Convention (3.44) to FAL 38 (document FAL 38/4/2), where, after due consideration, it was decided to proceed with the proposed amendments to Standard 3.44.

12 The Committee concluded that:

- in view of the decision taken at FAL 38 to proceed with the amendments to Standard 3.44 and in view of the fact that it was not procedurally appropriate to consider the proposal contained in document LEG 100/5 under this item of the Legal Committee's agenda, this issue should not be dealt with further by the Committee;

- there was, therefore, no need to reconvene the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident to consider the issue;
- notwithstanding that it may take some time for FAL to finalize the amendments to Standard 3.44, the issues raised by the Islamic Republic of Iran remain solely within the purview of the relevant provisions of the Convention on Facilitation of International Maritime Traffic, 1965 (FAL Convention). Work on this issue should, therefore, continue in FAL and be brought to its natural conclusion there; and
- the Islamic Republic of Iran and other interested Member Governments should consider submitting the issue, including the draft resolution, to an appropriate IMO organ, possibly to the forthcoming Assembly. Assuming the Assembly agreed to adopt it, on the basis of the recent decision of FAL 38, this would provide the short-term solution sought by the Islamic Republic of Iran and other delegations.

13 It was suggested, in the event that the issue was submitted to the Assembly, that any Assembly resolution should not levy conditions on the work of FAL, nor should it raise legal issues or those of a jurisdictional nature.

PIRACY

14 The Committee noted the outcome of the eleventh and twelfth sessions of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia, held in Copenhagen in September 2012 and in April 2013 (LEG 100/14, paragraphs 6.1 to 6.16).

15 It expressed strong support for a proposal that organizations in consultative status with IMO share their experience in resolving problems relating to the apprehension of pirates as well as share with IMO any related information.

16 The Committee noted the information provided by the United Nations Interregional Crime and Justice Research Institute (UNICRI) on its database of court decisions related to piracy off the coast of Somalia, as well as statistics drawn from its Piracy Analysis, including the average age of pirates; the region and clans they come from; their occupations; when attacks are most likely to occur; the number of pirates participating in individual attacks; the use of motherships; the number of casualties occurring in pirate ranks and the number and type of ships boarded. The Committee agreed to collaborate closely with UNICRI with regard to piracy-related issues.

COLLATION AND PRESERVATION OF EVIDENCE FOLLOWING AN ALLEGATION OF A SERIOUS CRIME HAVING TAKEN PLACE ON BOARD A SHIP OR FOLLOWING A REPORT OF A MISSING PERSON FROM A SHIP, AND PASTORAL AND MEDICAL CARE OF VICTIMS

17 The Committee recalled that the Assembly, at its twenty-seventh regular session, adopted resolution A.1058(27) on *Collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims*. The resolution invited Member States and other parties concerned to submit proposals to the Legal Committee to enable consideration of the issues raised in the resolution, bearing in mind that issues of criminal jurisdiction should be consistent with international law (LEG 100/14, paragraphs 7.1 to 7.13).

18 The Committee also noted its agreement, at its last session, to include this item on its agenda, with a target completion date of 2014.

19 The Committee considered document LEG 100/7, which was introduced by the delegation of the United Kingdom, on behalf of the co-sponsoring delegations, proposing the development of *Guidelines on the collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims*. The draft Guidelines were based on existing Guidelines developed by the Maritime Safety Committee (MSC) to assist in the investigation of crimes of piracy and armed robbery against ships, adapted to fit the particular issues related to other alleged crimes at sea; and contained guidance on actions in the event of a missing person and on the pastoral and medical care of victims.

20 After discussing the five substantive issues set out in paragraph 7 of the document, the Committee established a Working Group under the chairmanship of Ms. Katy Ware (United Kingdom) to discuss the Guidelines, with the terms of reference contained in document LEG 100/WP.3.

21 The Committee approved in its entirety the text of the draft Guidelines, as revised by the Working Group, including their new title and the associated appendices; approved the associated draft resolution to the Guidelines; agreed to the working group's recommendation not to convene an intersessional working group or correspondence group to develop the Guidelines further; and approved the report of the Working Group as contained in document LEG 100/WP.8.

22 The Committee further agreed to refer the draft Guidelines and their associated draft Assembly resolution (see LEG 100/14, annex 2) to the twenty-eighth regular session of the Assembly for adoption, subject to the Secretariat making any necessary editorial amendments to the text.

APPLICATION OF THE COMMITTEE'S GUIDELINES

REVIEW OF PLANNED OUTPUTS

23 The Committee reviewed its planned outputs (POs) for the 2012-2013 biennium (LEG 100/14, paragraphs 11.1 to 11.5). In particular, it considered those issues identified by the Council Ad Hoc Working Group on the Organization's Strategic Plan not considered at its previous session, such as outputs not in SMART terms, duplicate outputs, outputs identified as being continuous, and outputs on which no work had been undertaken for an extended period.

24 In so doing, the Committee recalled C 109's request that the Secretary-General, as well as the committees and sub-committees, specify interim outputs, or target completion years for these outputs, when proposing the next High-level Action Plan for the 2014-2015 biennium.

25 Bearing in mind that the description of POs for which the Committee is not the coordinating organ (and also unplanned outputs (UOs)) as continuous or otherwise was part of an internal process in the Secretariat, on which the Secretary-General will report to the Council in due course, it was agreed that no review at this session of the Committee of these POs and UOs was, therefore, necessary.

26 To assist the Committee, an informal group was established under the chairmanship of Mr. Gaute Sivertsen (Norway), to consider refinement of the Committee's POs for the 2012-2013 biennium and develop recommendations for the Committee's consideration, if appropriate, for the biennial agenda 2014-2015 to be submitted to the twenty-eighth regular session of the Assembly.

Review of POs for the 2012-2013 biennium

27 Following the outcome of the informal group's considerations, the Committee agreed to its report on the status of POs for the current biennium (LEG 100/14, paragraphs 11.6 and 11.7).

POs for the next biennium (2014-2015)

28 The Committee agreed on proposals on planned outputs for the 2014-2015 biennium. In so doing, it agreed to include proposed PO 1.1.2.41, as modified, in the agenda for the biennium following the next biennium 2014-2015. It also agreed to delete PO 5.2.4.5, which overlaps with proposed PO 1.3.1.1, as modified. All other proposed changes were considered to be self-evident (LEG 100/14, paragraphs 11.8 to 11.10).

29 The Committee agreed to submit the above decisions to C 110 for its endorsement.

ITEMS FOR INCLUSION IN THE AGENDA FOR THE 101ST SESSION OF THE LEGAL COMMITTEE

30 The Committee approved the list of substantive items for inclusion in the agenda for its 101st session. However, it was suggested that the agenda, particularly the item "Any other business", be aligned with that of the other committees and, accordingly, that the sub-item "Liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities" should not be specifically referred to under this agenda item. In view of the differing opinions on this issue, it was decided to refer this matter to the Council for its consideration (LEG 100/14, paragraphs 11.11 and 11.12).

MEETING-WEEKS IN THE 2014-2015 BIENNIUM

31 The Committee agreed that two meeting-weeks should be adequate for the 2014-2015 biennium (LEG 100/14, paragraph 11.13).

LIABILITY AND COMPENSATION ISSUES CONNECTED WITH TRANSBOUNDARY POLLUTION DAMAGE FROM OFFSHORE EXPLORATION AND EXPLOITATION ACTIVITIES

32 The Committee, recalling its decision at LEG 99, which was in turn noted by C 108, to analyse further the liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities, with the aim of developing guidance to assist States interested in pursuing bilateral or regional arrangements, without revising Strategic Direction 7.2 (LEG 100/14, paragraphs 13.1 to 13.8), discussed two documents submitted by Indonesia. The first (LEG 100/13) reported on a conference on the subject held in Bali, Indonesia, in November 2012. The second (LEG 100/13/2) contained principles for guidance on model bilateral regional agreements/arrangements.

33 Following the discussion, in which a variety of views were put forward, there was general support for increased cooperation between States on the subject, as well as for further work by the Committee.

34 The Committee agreed that:

- the keyword in providing guidance was collaboration by States and assistance to those States which are in need of guidance for bilateral and multilateral agreements;
- Member States were invited to send examples of existing bilateral and regional agreements to the Secretariat; and
- at the same time, the delegation of Indonesia was encouraged to continue its work intersessionally to facilitate further progress within the Committee.

ADVICE AND GUIDANCE ON ISSUES BROUGHT TO THE LEGAL COMMITTEE IN CONNECTION WITH IMPLEMENTATION OF IMO INSTRUMENTS; ADVICE ON THE IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1992

35 The Committee considered a request for advice by the International Oil Pollution Compensation Funds (IOPC Funds) on the possible consequences of the discrepancies between insurance policies, blue cards and certificates issued under the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92) (LEG 100/14, paragraphs 13.9 to 13.15).

36 In particular, the Committee considered:

- whether the State issuing the CLC certificate has an obligation to investigate the terms, conditions and cover provided in certificates (blue cards) presented by insurers; and
- whether, as a consequence, the State would have a potential liability to the IOPC Fund, should the Fund suffer a loss as a result of the insurance cover being insufficient.

37 In discussing these issues, the Committee noted that it had not been requested to provide advice on a specific case, but instead was invited to express its views on the two questions listed above on the basis of CLC 92.

38 It was noted further that these questions go beyond the narrow limits of claims against the IOPC Fund under the 1992 Civil Liability and Fund Conventions and have much broader characteristics and implications that potentially touch upon a number of international conventions, including the 2001 Bunkers Convention, the 2002 Protocol to the Athens Convention, as well as other instruments providing for State certificates.

OTHER ITEMS

39 The Committee made progress on other items including provision of financial security in cases of abandonment, personal injury to, or death of, seafarers in the light of the progress towards the entry into force of the ILO Maritime Labour Convention, 2006 and of the amendments relating thereto (LEG 100/14, paragraphs 4.1 to 4.7); technical co-operation activities related to maritime legislation (LEG 100/14, paragraphs 9.1 to 9.7); and review of the status of conventions and other treaty instruments emanating from the Legal Committee (LEG 100/14, paragraphs 10.1 to 10.12).

SPECIAL EVENT TO COMMEMORATE THE 100TH SESSION AND EXPRESSION OF APPRECIATION TO THE INTERNATIONAL MARITIME LAW INSTITUTE (IMLI)

40 On Thursday 18 April 2013, in the afternoon, a special event in the form of a seminar was held to commemorate the 100th session of the Legal Committee. The texts of the presentations from eminent speakers, including past and present Chairmen of the Committee, can be found at the following link: <http://www.imo.org/MediaCentre/HotTopics/LEG100/Pages/leg100presentations.aspx>.

41 In expressing its appreciation of this event, the Legal Committee also expressed its appreciation to the International Maritime Law Institute (IMLI), for the presentation to the Committee, at the close of the special event, of the IMLI Award for Meritorious Contribution towards the Progressive Development and Codification of International Maritime Law.

ACTION REQUESTED OF THE COUNCIL

42 The Council is invited to:

- .1 consider the report of the 100th session of the Legal Committee (LEG 100/14) and, in accordance with Article 21(b) of the IMO Convention, transmit it, with any comments and recommendations, to the twenty-eighth session of the Assembly;
- .2 note the Committee's decision to revert to the practice of having only one Vice-Chairman, and to amend its Rules of Procedure accordingly (paragraph 3);
- .3 note the findings of the SRI survey that the rights of seafarers, as enshrined in the Guidelines on fair treatment of seafarers in the event of a maritime accident, are often subject to violation (paragraph 8);
- .4 note the draft Assembly resolution on the *Guidelines on the preservation and collection of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of persons affected*, in annex 2 to LEG 100/14, approved by the Committee for submission to the twenty-eighth session of the Assembly, for adoption (paragraphs 21 and 22);
- .5 note the Committee's agreement to its report on the status of planned outputs for the 2012-2013 biennium (paragraph 27);
- .6 endorse the Committee's decisions on proposals on planned outputs for the 2014-2015 biennium (paragraph 28);
- .7 consider the suggestion that the Committee's agenda for LEG 101, particularly the item "Any other business", be aligned with that of the other committees and, accordingly, that the sub-item Liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities should not be specifically referred to under this agenda item (paragraph 30); and
- .8 endorse the Committee's decision that two meeting-weeks should be adequate for the 2014-2015 biennium (paragraph 31).